

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

CATHERINE MENDENHALL ARMS,

Plaintiff,

VS.

**NO: 3:10-CV-290
Jordan/Guyton**

**STONEBRIDGE LIFE INSURANCE
COMPANY (Successor to JC Penney
Life Insurance Company),**

Defendant.

**PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

Comes the plaintiff who would respectfully respond to the motion for partial summary judgment filed by the defendant pursuant to the provisions of Fed.R.Civ.P. 56. The basis for the motion are claims by the defendant that:

1. Plaintiff's decedent was not riding in a "common carrier" so as to entitle to payment under Part I of the schedule of coverage;
2. The Tennessee Consumer Protection Act ("TCPA") T.C.A. 47-18-101 et. seq. is not applicable;
3. Plaintiff's decedent did not die by accidental means.

The plaintiff verily believes that her decedent was a passenger in a "common carrier" at the time of the relevant events and that the TCPA is applicable under the facts of this case. Further, the plaintiff's decedent died of accidental means which was an insuring event under defendant's policies.

In addition to the exhibits supplied by the defendant, the plaintiff would supply the following exhibits for incorporation in this response:

1. Affidavit of Dennis Rowe, Market General Manager of Rural/Metro of Tennessee, LP, dated November 8, 2010;
2. Cover letter from Darinka Mileusnic-Polchan, MD, PhD, supplying amended death certificate, dated January 20, 2011;
3. Affidavit Darinka Mileusnic, MD, PhD, Chief Medical Examiner, Knox County, changing death certificate of Donald Raymond Arms, Jr., dated January 20, 2011;
4. Death Certificate of Donald Ray Arms, Jr. issued February 7, 2011 showing “Manner of death ‘could not be determined.’”;
5. Advertisement circulated to the public by defendants’ predecessor, J.C. Penney Life Insurance Company;
6. Affidavit of William F. McCormick, M.D., F.A.C.P., with attached report, dated February 11, 2011 reflecting that decedent died from injuries sustained in wreck of June 5, 2009;
7. Deposition Shyrl Clark, dated December 2, 2010;
8. Deposition Todd A. Nickloes, D.O., FACOS, dated December 28, 2010.

WHEREFORE, the plaintiff respectfully requests that the motion for summary judgment filed by the defendant be hence overruled.

s\Robert J. English
Robert J. English, BPR 1038
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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of March, 2011, a copy of the foregoing Response to Motion for Summary Judgment was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular US Mail. Parties may access this filing through the court's electronic filing system.

s\Robert J. English

Robert J. English

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